8157317/2023/TW-LTR-I-SOW01

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

TRIBAL WELFARE DEPARTMENT - LTR - Revision Petition filed by Sri Panduri Chella Rao, S/o.Kannayya R/o.Molleru (V), Gangavaram Mandal, Alluri Sitharamaraju District against the orders of the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District in CMA No. 36/05, dated: 06.01.2007 in respect of land an extent of Acs. 7.59 cts. in Survey No. 94 situated at Molleru village of Gangavaram Mandal, Alluri Sitharamaraju District - Dismissed-Orders-Issued.

SOCIAL WELFARE (TW.LTR.I) DEPARTMENT

G.O.MS.No.65 Dated: 30.10.2023
Read the following:

1. Revision Petition filed by Sri Panduri Chella Rao, S/o.Kannayya, R/o. Molleru (V), Gangavaram Mandal, Alluri Sitharamaraju District, dated. 29.01.2007.
2. From the Project Officer, ITDA, Rampachodavaram, Alluri Sitharamaraju District, C.M.A. No.36/05, Dated:08.01.2013.

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ORDER:

In the reference 1st read above Sri Panduri Chella Rao, S/o. Kannayya, R/o. Molleru (V), Gangavaram Mandal, Alluri Sitharamaraju District erstwhile East Godavari District against the orders of the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District in CMA No.36/05, dated: 06.01.2007 in respect of land an extent of Acs. 7.59 cts. in Survey No: 94 situated at Molleru village of Gangavaram Mandal, Alluri Sitharamaraju District erstwhile East Godavari District.

2. **Brief history of the subject case:**

a) The Special Deputy Tahasildar(TW), Gangavaram (M), Alluri Sitharamaraju District has filed a Complaint under section 3(1) (a) A.P.S.A.L.T.R., 1959 as amended by Reg. 1/70 for restoration of Petition Scheduled land after ejecting the non-tribal respondents (i.e. Sri Panduri Chella Rao, S/o. Kannayya and (4) others).

b) The Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District after due verification of the records has concluded that the actual transfer of land of taking over possession held by respondents on day of agreement only. As this sale agreement 1960 and other sale deed of 1958 is held between non-tribals only and the Petition Scheduled land is with non-tribal ever since 1902 and as no tribal possession on Petition Scheduled land is found at any time, it is held that no prohibitory transfer of land

(P.T.O)

occurred on Petition Scheduled land the possession and enjoyment of respondents on Petition Scheduled land is not violative under provisions of section 3(1)(a) of Regulation 1/1959 as amended by LTR 1/1970.

c) Hence, The Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District under section 3(2) (a) of APSALTR 1/59 as amended by 1/70 has ordered **dropped** the Petition in LTRP No. 13 of 2001, dated. 13/8/2002.

d) Aggrieved by the orders of the Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District, the Special Deputy Tahasildar (TW), Gangavaram (M), Alluri Sitharamaraju District has filed an appeal against the orders LTRP No.13 of 2001, dated. 13/8/2002 before the Additional Agent to Government cum Project Officer, I.T.D.A., Rampachodavaram, Alluri Sitharamaraju District.

e) After careful examination of the matter, the Additional Agent to Government cum Project Officer, ITDA, Rampachodavaram has directed the Mandal Revenue Officer, Gangavaram to eject all the Respondents or their men or any other person bound by the ejectment order and decree from the Appeal Scheduled lands the possession of land shall be kept in the Government Custody, for the onward distribution of the land less poor Tribals and also to recover the amount of Rs.10,000/- (Rupees Ten thousands only) equally from Respondents. The amount recovered is deposited in the Government Treasury and report the action taken by the Mandal Revenue Officer, Gangavaram complying the orders of the Court of the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District erstwhile East Godavari District.

3. Aggrieved by the above orders, the Sri Panduri Chella Rao, S/o.Kannayya R/o.Molleru (V), Gangavaram Mandal, Alluri Sitharamaraju District has filed a Revision petition dated: 29.01.2007, before the Government of A.P., against the orders of the Additional Agent to the Government cum Project Officer, ITDA, Rampachodavaram, Alluri Sitharamaraju District in CMA No.36/05, dated. 06.01.2007 in respect of land an extent of Acs. 7.59 cts. in Survey No: 94 situated at Molleru village of Gangavaram Mandal, Alluri Sitharamaraju District with a request to set aside the orders of the Additional Agent to Government in CMA No.36/05, dated. 06.01.2007 in the interest of Justice and to pass such other or orders as this Hon'ble Government may deem fit and proper in the circumstances of the case.

4. The Project Officer, ITDA, Rampachodavaram cum the Additional Agent to the Government has been requested to furnish the detailed Parawise remarks and connected records in the subject case so as to dispose of the Revision Petition at Government level. Accordingly, the Project Officer, ITDA, Rampachodavaram in his Letter dated: 08.01.2013 has enclosed the copy of order issued by the Additional

Agent to Government, Rampachodavaram, Alluri Sitharamaraju District passed in CMA No. 36/05, dated. 06.01.2007 and the remarks on the affidavit filed by the Petitioner.

5. The said Revision Petition has been posted for hearing before the Hon'ble Revision Authority on several dates and finally 26.08.2023 duly informing the same to the petitioner and defendants. During the course of the hearing and on perusal of the connected records/relevant materials and Para-wise Remarks submitted by the Project Officer, ITDA, Rampachodavaram cum Additional Agent to the Government, Rampachodavaram, Alluri Sitharamaraju District and written arguments filed by both parties counsels, the Revision Authority has observed that:

(I) This Memorandum Revision Petition is filed by Sri Panduri Chella Rao S/o. Kannayya, R/o. Molleru (V), Gangavaram Mandal, East Godavari District presently in Alluri Sitharamaraju District the against orders of the Additional to Agent Government, Rampachodavaram, with regard to lands admeasuring Acs. 7.59 cts in Survey No. 94 situated at Molleru village of Gangavaram Mandal of East Godavari District, passed in CMA No. 36/2005, dated: 06.01.2007, allowing the appeal, while reversing the orders of the Special Deputy Collector, Tribal Welfare, Rampachodavaram, Alluri Sitharamaraju District passed in LTRP No. 13/2001, dated: 13.08.2002. The Additional Agent to Government passed the impugned order evicting the respondents there in the appeal or their men or any other person bound by the ejectment order from the Appeal Scheduled lands and keeping the land in the custody of Government Custody, for the onward distribution to the less poor Tribals and also recovering the amount of Rs.10,000/- (Rupees Ten thousands only) equally from the Respondents to deposit the recovered amount in the Government Treasury.

(II) The matter came for hearing finally before the Revision Authority on 26-08-2023. Counsel for the Revision Petitioner and the Special Deputy Collector, Tribal Welfare, Rampachodavaram, Alluri Sitharamaraju District were also present. Heard both sides. The counsel for the Revision Petitioner submitted that he has no objection to post the case for orders. The following order is made after perusal of the material documents available on the record.

(III) The main grounds of the Revision Petitioners are that the sale transaction in relation of the lands in question took place prior to the commencement of the Land Transfer Regulations and therefore the authorities have no jurisdiction to entertain proceeding under the Land Transfer Regulations and the primary authority passed an order observing that there is no prohibitory transfer of the land involved in the case and their

possession is valid and the finding of the Appellate Authority is totally perverse and their contentions were not considered in a proper manner and the judgment reported in 1995 (3) ALD 222 is in support of their case where in the Hon'ble High Court of A.P. held that the transfer includes contract to sell and purchase of land in the Scheduled Area by a non-tribal from another non-tribal in pursuance of agreement of sale entered prior to 03.02.1970 is valid though the sale deed is executed subsequently and his case is also supported by an order passed by the Special Deputy Collector, Tribal Welfare, Rampachodavaram, Alluri Sitharamaraju District in LTR 75/94. The Revision Petitioners have requested to set aside the impugned order passed by the Additional Agent to the Government. However the Additional Agent to Government filed para-wise remarks opposing the contention of the Revision Petitioner here in.

(IV) The case was initiated on the report of Special Deputy Tahsildar, Tribal Welfare/primary authority, Gangavaram for restoration of Petition Schedule land to Government after ejecting the Non-Tribal Respondent. The Special Deputy Collector, Tribal Welfare, Rampachodavaram, Alluri Sitharamaraju District passed an order holding that the taking over the possession of the Petition Scheduled (PS) lands held by non tribals on the day of sale agreement which was held between non tribals and Petition Scheduled land has been with non-tribal ever since 1902 and as no tribal was in possession as such there is no violation under Provisions of section 3(1)(a) of Regulation 1/1959 as amended by LTR 1/1970 and finally dropped the Petition in LTRP No. 13 of 2001, dated: 13-08-2002. The Additional Agent to Government passed the impugned order reversing the order of the primary authority.

(V) The Additional Agent to Government strongly opposed the case and stated that the said un registered deed was pressed to service by the non-tribals in order to escape from the clutches of tribal protective LTR of 1 of 1970 which prohibits transfer of land situated in the scheduled area not only between non-tribals and tribals but also among non tribals. As per Sec. 17 of the Registration Act of the value property is more than Rs.100/- such transaction shall be registered. If any transaction is not registered under the Registration Act, it which shall not have evidentiary value to corroborate. Therefore, the unregistered sale deed is not admissible where the documents that ought to be registered under registration Act.

(VI) The Additional Agent to Government further stated in his parawise remarks that the Sec. 3 of the LTR says that the burden of proof lies on the

non-tribal and the primary authority instead of conducting an elaborate enquiry into the petition filed relied on the unregistered sale agreement produced by the non-tribal and gave an erroneous finding as the transaction was held in 1960 and that it will not hit the provisions of Land Transfer Regulations.

(VII) The background of cases and rival submissions give rise to following points for consideration.

Whether the claim of the Revision Petitioner on the basis of an un registered sale agreement in 1960 in respect of the Revision Petition lands is valid? And Whether the occupation and possession of such lands is violative of the provisions of the AP Scheduled Area Land Transfer Regulations of 1 of 59 as amended by 1 of 70"?

(VIII) The Clause (b) of Section 3(1) which was substituted by Regulation I of 1970 raised a presumption that the property situated in the Agency Tracts in, possession of a non-tribal shall be presumed to have been acquired by such a person or his predecessor-in-possession through a transfer made to him by a member of Scheduled Tribe. The transfer of lands situated in the scheduled area in favour of non tribals is prohibited under the Land Transfer Regulations 1 of 70.

(IX) The argument of the Revision Petitioner is that the sale transaction took place prior to the commencement of AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 through an unregistered sale agreement in 1960 and the land involved came in to possession on the date of agreement.

(X) There is no doubt that the Land Transfer Regulations 1 of 59 as amended by 1 of 70 are prospective in nature but not in retrospective. But the point here is that whether the claimant has been in possession and enjoyment of the land in question from the date of the un registered sale agreement to the date on which the LTR 1 of 70 came in to force i.e 03.02.1970 which prohibits the transfer of lands between non tribals also in the scheduled area.

(XI) There is no evidence produced by the non tribal Revision Petitioner in the case that the land in question came in to their possession on the date of

execution of the unregistered sale agreement in 1960. In such case what is the validity of such un registered sale agreement said to have been effected in the year 1960.

(XII) The earlier order passed by the primary authority in LTRP No. 13/2001 also referred the earlier order passed by it in LTRP No. 75/94 which was also decided on the un registered sale agreement in 1960 effected between non tribals. The primary authority erroneously observed in the order in LTRP No. 13/2001 that no tribal was found in the possession of the lands in question without citing any document on the record. Such observations without any basis of evidence shall not be considered as a valid finding.

(XIII) The land transfers effected through an unregistered sale agreement is not valid in the light of the judgment made in Banguru Ramatulasamma Vs. Yada Mastan Reddy, dated: 10-08-1998 (1998 (5) ALD 502,) where in the Hon'ble High Court of Andhra Pradesh held that an un stamped and un registered sale agreements cannot be taken as an evidence of proof under section 17(b) of Registration Act. Hence the un registered sale agreement shall not be considered as a primary evidence perse without any substantial proof connecting to the said un registered sale agreement with the subsequent registered sale deed if any.

(XIV) The ruling cited by the Revision Petitioner, made by the Hon'ble High Court of A.P. reported in 1995 (3) ALD 222 is not relevant to the facts of the case. There is no valid and acceptable evidence produced by the Revision Petitioner in support of his claim that the possession was handed over to the non tribal purchaser on the even date of the unregistered sale agreement by the non tribal seller.

(XV) The Memo No. 3204/LTR1/06, dated: 19-07-2008 issued by the Government of Andhra Pradesh directs the authorities not to consider the unregistered sale deeds produced by non tribals in the Scheduled Area as an evidence during the enquiry under the provisions of LTR 1 of 59 as amended by 1 of 70 to check the exploitation of non tribals in land deals.

(XVI) The Hon'ble Supreme Court of Indiain Civil No. 3124, (Arising out of SLP (Civil) No.9305/2011), Delhi Development Authority Vs Gaurav Kukreja held that the immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of General Power of Attorney sales" or "Sale Agreement etc. transfers" do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. "The courts will

not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property "as per the said ruling of the Hon'ble Supreme Court.

(XVII) Therefore the non-claimant/Revision Petitioner cannot claim any right over the land situated in the scheduled area by virtue of an unregistered sale agreement which is said to have been effected between the non tribals without any proof to the recitals in the said agreement. The claim on the said un registered sale agreement in 1960 alone is here by disallowed.

(XVIII) The full bench decision of the Hon'ble High Court in its case Vemana Somalamma Vs Deputy Collector, Tribal Welfare, Rampachodavaram (1993(1) ALT 409) held that " the object of the Regulations seem to be that all immovable property in agency tract as far as possible must be restored to Government or Tribals; as it was held by them at one time."

(XIX) In exercise the powers conferred under section 6 of the AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 the Revision Petition filed by the Petitioner is hereby dismissed. Therefore the impugned order Dated: 06.01.2007, passed by the Additional Agent to Government in CMA No. 36/2005, is hereby upheld with a modification.

(XX) It is hereby directed further to return the amount of Rs.10,000/- (Rupees Ten thousands only) if at all recovered from the Revision Petitioners or others and deposited in the Government Treasury in relation to this case, since the provisions of the Land Transfer Regulations have not conferred any power on the Additional Agent to Government, to pass such directions while passing the impugned order. Hence the impugned order passed by the Additional Agent to Government is modified accordingly. As a sequel interim orders if any passed in the matter are hereby vacated. Revision Petition is disposed of accordingly.

6. Government after careful examination of the revision petition and the circumstances stated supra and in exercise of the powers conferred under Section 6 of A.P.S.A.L.T.R., 1959 as amended by Reg. 1/70, the orders passed by the Appellate Authority Project Officer, ITDA, Rampachodavaram, Alluri Sitharamaraju District in CMA No. 36/2005, dated: 06-01-2007 are hereby upheld and the Revision petition filed by Sri Panduri Chella Rao S/o.Kannayya R/o.Molleru (V), Gangavaram Mandal, Alluri Sitharamaraju District, against with regard to land an extent of 7.59 cts. in Survey No: 94 situated at Molleru village of Gangavaram Mandal, Alluri Sitharamaraju District erstwhile East Godavari District is Dismissed and Interim orders passed if any are hereby vacated in the matter.

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7. The Collector & District Magistrate, Alluri Sitharamaraju District, Paderu is requested to take necessary action in the matter. Accordingly, acknowledge the receipt of the case records, which are returned herewith to the Addititional Agent to Government/ Project Officer, Rampachodavaram, Alluri Sitharamaraju District.

8. This order shall be published in apegazette.cgg.gov.in.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
SECRETARY TO GOVERNMENT(TW)

To

The Agent to Government/Collector & District Magistrate,
Paderu, Alluri Sitharamaraju District. PIN-530 011.
The Additional Agent to Govt. cum Project Officer,
ITDA, Rampachodavaram,
Alluri Sitharamaraju District, PIN-533 288. (w.e)
The Special Deputy Collector, Rampachodavaram,
Alluri Sitharamaraju District. PIN-533 288
The Tahsildar, Devipatnam Mandal, Alluri Sitharamaraju District.
Sri Kola Satyaprasad, Advocate, Rampachodavaram,
Alluri Sitha Ramaraju District, PIN-533288.
Sri Panduri Chella Rao, S/o. late Kannayya,
R/o. Molleru Village, Gangavaram Mandal,
Alluri Sitharamaraju District.
Sri Appikonda Durgaiah,, S/o. Appalaswamy,
R/o. Molleru Village, Gangavaram Mandal,
Alluri Sitharamaraju District.
Sri Appikonda Kondayya, S/o. Appalaswamy,
R/o. Molleru Village, Gangavaram Mandal,
Alluri Sitharamaraju District.
Sri Molle Kollayya, S/o. Gangayya,
R/o. Molleru Village, Gangavaram Mandal,
Alluri Sitharamaraju District.
Sri Allam Venkata Ramana, S/o. Nukalamma,
R/o. Molleru Village, Gangavaram Mandal,
Alluri Sitharamaraju District.

Copy to:
The P.S. to Hon'ble Dy. Chief Minister (TW)
The P.S. to Secretary (TW).
The Commissioner of Printing, Stationery (for Publication in the AP Gazette),
Vijayawada.
SF/SC.

// FORWARDED : : BY ORDER //

SECTION OFFICER